



9th September 2019

Dear Sir/Madam,

DMA response to the ICO Data Sharing Code of Practice Consultation – September 2019

The DMA is Europe's largest trade body in the data and marketing industry, representing over 1,000 data-driven companies across the UK.

The DMA played a major role in the shaping of the GDPR data protection laws in the UK and EU and led the implementation in our industry as the trusted source for industry advice and guidance.

The DMA continues a leading role in discussions around data, tech and AI, ethics, marketing and beyond. Our Value of Data campaign—led in partnership with Edinburgh University's Design Informatics Department and the Bayes Centre—is leading the way in providing a place for discussions about the ethical use of data.

The DMA code—by which all of our 1,000 members have to abide—ensures that business practice and treatment of customers is performed with the principles of transparency, accountability, privacy and trust in mind.

The DMA receives complaints, monitors compliance and ensures that our members have the customer's interests at the centre of what they do. The DMA monitors compliance to the code – initially upon membership application and then periodically throughout the organisation's membership of the DMA. For further information on the DMA code, please visit <https://dma.org.uk/the-dma-code>).

The consultation

The DMA welcome the opportunity to provide feedback on the draft Data Sharing code of practice and would be happy to work with the ICO to ensure the new Code provides sound, practical guidance to all organisations whether big or small.

Overall the draft Code is good but the DMA have comments on a number of sections.

Summary – page 4, third paragraph.

The DMA is concerned about the final sentence of this paragraph. Setting carrying out a DPIA for all data sharing projects whatever their size as best practice would place unnecessary burdens on organisations and could lead to the process not being properly considered and followed when it is really needed. Many small scale projects will not need a DPIA, and suggesting that it is best practice to carry one out in every case could hamper small organisations who may decide against data sharing which would have benefited their organisation and their customers/supporters.

Summary – page 5, 7th paragraph

The DMA notes the inclusion of “marketing agencies” in the examples of those who share databases or lists of individuals. As you state further on in the code, this Code covers the sharing of data by controllers and sharing between controllers and processors is excluded. Marketing agencies are more likely to be a processor in these circumstances and therefore their role in the transfer of databases or lists of data subjects is not covered by the guidance in this code.

Data sharing covered by this Code – page 17 - Examples of real life data sharing activities

The 3rd example here, “a retailer provided customer details to a payment processing company”, is a controller to processor transfer of data and is therefore not covered by this Code, so should be removed.

Deciding to share data – page 20 - What do we need to do?

This again recommends carrying out a DPIA in all cases of data sharing. See our comments about this above.

Lawful basis for sharing personal data – page 38 How do we determine which lawful basis is appropriate, 2nd paragraph.

There is some blurring of processes here. The DMA would suggest that you decide if a DPIA is appropriate in the particular case, as part of a DPIA is deciding on your lawful basis. If you decide that a DPIA is not appropriate, you would then consider the issue of lawful basis as a separate process.

Security – page 49 – Are we still responsible after we’ve shared the data? First paragraph

The DMA believe it would be good to include details about carrying out a security audit if you decide not to carry out a DPIA, as this will cover similar considerations.

Sharing personal data in databases and lists – page 74 - How does data sharing apply to the acquisition or transfer of databases or lists.

The example of organisations listed here again includes marketing agencies, who will usually be acting as a processor in these circumstances so the sharing of data with them would not be covered by the Code.

Sharing personal data in databases and lists – page 75 - What must we do to ensure the database or list we are receiving is being shared in compliance with the law?

Point 2 – “identify the lawful basis on which it was obtained” – the DMA would suggest adding the following to this point “and that any conditions relating to that lawful basis have been complied with, for e.g. if using legitimate interests that a LIA has been carried out”

Point 5 – “check the records of consent, if relevant” – the DMA would suggest deleting “if relevant” and replacing with “if you are relying on consent”.

Sharing personal data in databases and lists – page 75 - What else do we need to do?

“Under Article 14 of the GDPR you must give privacy information to individuals whose data has been shared with you “within a reasonable period after obtaining the personal data, but at the latest within one month...”

Article 14 contain three situations and timeframes within which privacy information must be given to individuals if you do not acquire the data from them directly, and this requirement is under Article 14 (3) (a), which is likely to govern the circumstances surrounding the sharing of data.

The DMA would suggest that this is make this clear by adding in the sub-section, and in addition add that if the individuals concerned have already been provided with that privacy information, say before the sharing took place, there is no requirement on the recipients of the shared data to provide this information.

Sharing personal data in databases and lists – page 76 - How does data sharing interact with political campaigning? 4th paragraph

“If you use a third party organisation to send out campaign materials on your behalf using your databases, you are sharing data with that external organisation”

This again is sharing data with a processor, not with a controller as the third party is acting on your behalf and on your instructions, so this Code will not apply.

Data ethics and data trusts – page 86 - Is it ethical to share this data?

The DMA would suggest the mention of Codes of Practices that exist in various industries. The DMA Code puts the customer front and centre of any personal data considerations with its 5 principles of putting the customer first, respect privacy, be honest and fair, be diligent with data and take responsibility.

Conclusion

The DMA welcomes this guidance to help organisations, especially small and medium sized ones, to share data fairly and lawfully, and looks forward to working with the ICO to ensure there is clear and practical guidance for DMA members and the wider industry so they can comply with data protection requirements.

Yours faithfully,

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DMA